

Message Text

CONFIDENTIAL

PAGE 01 LIMA 08512 201601Z

44

ACTION L-03

INFO OCT-01 ARA-06 ISO-00 SS-15 SSO-00 SP-02 NSC-05 NSCE-00

CIAE-00 INR-07 NSAE-00 INRE-00 EB-07 COME-00 OMB-01

TRSE-00 OPIC-03 INT-05 USIA-06 AID-05 CIEP-01 STR-04

CEA-01 FRB-03 IGA-02 /077 W
----- 100301

O 201455Z SEP 76

FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 1866

C O N F I D E N T I A L LIMA 8512

FOR L - MR. LEIGH; ARA - MR. LUERS

E.O. 11652: GDS

TAGS: EIND, EINV, EMIN, PFOR, PE

SUBJECT: MARCONA - DRAFT AGREEMENT

1. FOLLOWING IS DRAFT TEXT INTER-GOVERNMENTAL AGREEMENT TO
BE SIGNED WEDNESDAY, SEPTEMBER 22, 1976 IF ALL GOES WELL.

2. ARTICLE ONE IS SUBJECT TO FURTHER REVISION DEPENDING ON
FINAL PACKAGE; REST IS UNLIKELY TO CHANGE FURTHER. PLEASE NOTE
THAT INTRODUCTORY CLAUSE, FIRST PARAGRAPH OF ARTICLE 1, MOST OF
ARTICLE 2 AND ENTIRE TEXT OF ARTICLES 3-5 SIMPLY PICK UP CLEARED
LANGUAGE FROM APRIL DRAFT JOINT COMMUNIQUE AND EXCHANGE OF NOTES.

3. TEXT: THE GOVERNMENTS OF PERU AND THE UNITED STATES OF
AMERICA, WITH THE OBJECTIVE OF ARRIVING AT A DEFINITIVE SETTLEMENT
CONCERNING JUST COMPENSATION FOR THE EXPROPRIATED ASSETS OF THE
MARCONA MINING COMPANY, WHOSE MINING METALLURGICAL COMPLEX IN PERU
WAS NATIONALIZED IN ACCORDANCE WITH THE STIPULATIONS OF DECREE
LAW 21228, HAVE DECIDED TO CONCLUDE THE FOLLOWING AGREEMENT:

ARTICLE 1. IN VIEW OF THE DISCREPANCIES ARISING IN THE VALU-
TION OF THE PROPERTIES OF THE NORTH AMERICAN MARCONA MINING
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 LIMA 08512 201601Z

COMPLANY SUBJECT TO EXPROPRIATION BY THE GOVERNMENT OF PERU, THE

GOVERNMENT OF THE UNITED STATES OF AMERICA INTERPOSED ITS GOOD OFFICES TO THE END THAT RELATIONS BETWEEN THE TWO COUNTRIES SHOULD NOT BE AFFECTED BY A MATTER WHICH SHOULD BE TREATED IN CONFORMITY WITH THE LAWS OF THE EXPROPRIATING COUNTRY AND WITH PRINCIPLES OF INTERNATIONAL LAW.

WITHIN THESE PRINCIPLES AND IN CONFORMITY WITH THE REPORTS OF THE PERTINENT COMMISSIONS, WHICH HAVE BEEN APPROVED BY SUPREME DECREE NO. OF , THE GOVERNMENT OF PERU AGREES TO PAY TO THE MARCONA MINING COMPANY AS JUST COMPENSATION FOR ITS EXPROPRIATED ASSETS THE SUM OF WHICH WILL BE PAID IN THE FOLLOWING FORM: THE PAYMENT IN CASH OF \$ MILLION WHICH WILL BE MADE ONLY ON THE DATE IN WHICH THE NEW FINANCING WHICH THE GOVERNMENT OF PERU IS NEGOTIATING WITH A GROUP OF PRIVATE NORTH AMERICAN BANKS BECOMES EFFECTIVE; THE INDIRECT PAYMENT OF A CONTRACT BY WHICH MINPECO SELLS TO MARCONA, INC. 3.1 MILLION TONS OF IRON ORE IN THE FORM OF PELLETS EXCLUSIVELY FOR THE U.S. MARKET AT A PRICE OF \$18 MILLION PER TON FOR THE FIRST 1.1 MILLION TONS AND \$20 MILLION FOR THE REMAINING TWO MILLION TONS, WITHIN A TERM OF THREE YEARS, THE INDIRECT PAYMENT OF THROUGH A FREIGHT CONTRACT BETWEEN CPV AND MARCONA CARRIERS FOR THE CARRIAGE OF MILLION TONS OF IRON ORE, IN THE FORM OF PELLETS, IN WHICH THE NORTH AMERICAN COMPANY WILL OBTAIN A DOLLAR ADDITIONAL IN COMPENSATION PER TON TRANSPORTED.

ARTICLE 2. THE GOVERNMENT OF THE UNITED STATES DECLARES THAT THE OBLIGATIONS UNDERTAKEN BY THE GOVERNMENT OF PERU TO THE MARCONA MINING COMPANY AS STIPULATED IN ARTICLE 1, WHEN FULLY IMPLEMENTED WILL CANCEL ALL THE RESPONSIBILITIES OR OBLIGATIONS OF THE GOVERNMENT OF PERU TOWARD THE MARCONA CORPORATION, ITS SUBSIDIARIES, BRANCHES OR AFFILIATES ARISING OUT OF THE NATIONALIZATION BY PERU OF THE PERUVIAN BRANCH OF THE MARCONA MINING COMPANY IN ACCORDANCE WITH THE STIPULATIONS OF DECREE LAW 21228 ISSUED BY THE GOVERNMENT OF PERU.

ARTICLE 3. IN VIEW OF THE INTER-GOVERNMENTAL NATURE OF THIS AGREEMENT, THE GOVERNMENT OF PERU DECLARES THAT THERE NO LONGER EXIST ANY LIABILITIES FOR THE PAYMENT OF TAXES, OR OTHER CHARGES OR OBLIGATIONS, OR LEGAL ACTIONS, CIVIL OR OTHERWISE, AGAINST THE MARCONA CORPORATION OR ITS SUBSIDIARIES, BRANCHES OR AFFILIATES, CONFIDENTIAL

CONFIDENTIAL

PAGE 03 LIMA 08512 201601Z

INCLUDING THE MARCONA MINING COMPANY, OR AGAINST THE PRESENT OR FORMER OFFICIALS OF ANY OF THEM, REGARDING THEIR ACTIVITIES AS EMPLOYEES OF MARCONA CORPORATION, ITS SUBSIDIARIES, BRANCHES OR AFFILIATES, PRIOR TO THE CONCLUSION OF THE AGREEMENT. NOR WILL ANY CLAIMS OR PROCEEDINGS BASED ON SUCH TAXES, CHARGES, OBLIGATIONS, OR LEGAL ACTIONS AFFECTING THE NATURAL OR JURIDICAL PERSONS REFERRED TO ABOVE BE ASSERTED, CONTINUED OR ENFORCED IN THE FUTURE.

ARTICLE 4. AFTER THIS DATE, NEITHER GOVERNMENT WILL PRESENT TO THE OTHER, ON ITS BEHALF OR ON BEHALF OF ANOTHER, ANY CLAIM OR DEMAND ARISING OUT OF THE NATIONALIZATION BY THE GOVERNMENT OF PERU OF MARCONA MINING COMPANY'S MINING-METALLURGICAL COMPLEX IN PERU OR OF THE OPERATIONS OF THE MARCONA MINING COMPANY OR ITS SUCCESSOR IN PERU AS OF THE DATE OF THIS AGREEMENT. IN THE EVENT THAT SUCH CLAIMS ARE PRESENTED DIRECTLY BY THE NATIONALS OF ONE COUNTRY TO THE GOVERNMENT OF THE OTHER, SUCH GOVERNMENT WILL REFER THEM TO THE GOVERNMENT OF THE NATIONAL CONCERNED.

ARTICLE 5. THE GOVERNMENT OF PERU AFFIRMS THAT IN ACCORDANCE WITH ARTICLE 12 OF DECREE LAW 21228, HIERRO PERU HAS ASSUMED, BY SUBROGATION, THE OUTSTANDING OBLIGATIONS OF THE PERUVIAN BRANCH OF THE MARCONA MINING COMPANY TO SUPPLIERS AND LENDING INSTITUTIONS, AS WELL AS THE SALARIES AND SOCIAL BENEFITS OF ITS EMPLOYEES.

ARTICLE 6. THIS AGREEMENT WILL ENTER INTO FORCE UPON ITS SIGNATURE. DONE IN LIMA THE OF SEPTEMBER, 1976, IN SPANISH AND ENGLISH, BOTH VERSIONS BEING EQUALLY AUTHENTIC. END TEXT. DEAN

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, NATIONALIZATION, COMPENSATION, TEXT, MINING INDUSTRY
Control Number: n/a
Copy: SINGLE
Draft Date: 20 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: powellba
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976LIMA08512
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760354-1303
From: LIMA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760942/aaaabjob.tel
Line Count: 134
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: powellba
Review Comment: n/a
Review Content Flags:
Review Date: 26 JUL 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <26 JUL 2004 by saccheem>; APPROVED <28 OCT 2004 by powellba>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MARCONA - DRAFT AGREEMENT
TAGS: EIND, EINV, EMIN, PFOR, PE, US, MARCONA
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006